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WISCONSIN EMPLOYMENT  
RELATIONS COMMISSION

ARBITRATION OPINION AND AWARD

In the Matter of Arbitration )  
 )  
Between )  
 )  
HORICON SCHOOL DISTRICT )  
 )  
And )  
 )  
HORICON EDUCATION ASSOCIATION )  
\_\_\_\_\_ )

Case 10  
No. 37757  
MED/ARB-4105

Impartial Mediator Arbitrator

William W. Petrie  
1214 Kirkwood Drive  
Waterford, WI 53185

Mediation and Hearing Held

April 29, 1987  
School District Offices  
Horicon, Wisconsin

Appearances

For the Board

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For the Association

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## BACKGROUND OF THE CASE

This is an interest arbitration proceeding between the Horicon School District and the Horicon Education Association, with the matter in dispute the terms of the parties' 1986-1987 renewal labor agreement.

During preliminary negotiations between the parties they were able to resolve all open issues with the exception of the salary schedule to be applicable for the duration of the renewal agreement. Thereafter the undersigned was selected by the parties to act as mediator-arbitrator, pursuant to a voluntary impasse procedure agreed upon by the parties on April 22, 1987.

Preliminary mediation took place between the parties on April 29, 1987, after which it was determined by the undersigned that the parties were at impasse and it was appropriate to proceed to arbitration. The parties proceeded immediately to a hearing, at which time all parties received a full opportunity to present evidence and argument in support of their respective positions, and each closed with the submission of both post-hearing briefs and reply briefs.

## THE FINAL OFFERS OF THE PARTIES

The Association proposes a salary schedule with thirteen experience steps and nine lanes, with the BA 1 step carrying an annual salary of \$17,700 and BA +48/MA +12 carrying an annual salary of \$32,902. The District proposes an identical salary structure with a BA 1 step of \$17,214 and a BA +48/MA +12 step of \$31,999.

The District's final offer would add 3.7% to each cell on the pre-existing salary structure, while the Association's final offer would add 6.63% to each cell. The District's final offer would yield an approximate \$1,323 increase to each returning teacher, while the Association's final offer would yield an approximate increase of \$2,082 for each returnee.

## THE ARBITRAL CRITERIA

In their voluntary impasse procedure agreement, the parties agreed that the arbitration would be governed by the criteria referenced in Section 111.70(4)(cm)(7) of the Wisconsin Statutes, which direct the Mediator Arbitrator to give weight to the following factors:

- "a) The lawful authority of the municipal employer.
- b) The stipulations of the parties.
- c) The interest and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.
- d) Comparisons of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally in public employment in the same community and in comparable communities

- and in private employment in the same community and in comparable communities.
- e) The average consumer prices of goods and services, commonly known as the cost-of-living.
  - f) The overall compensation presently received by the municipal employees, including direct wage compensation, vacations, holiday and excused time, insurance and pensions, medical and hospitalization benefits, and continuity and stability of employment, and all other benefits received.
  - g) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
  - h) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment."

POSITIONS OF THE PARTIES

In support of the position that its final offer is the more appropriate of the two before the Arbitrator, the Association emphasized the following basic arguments.

- (1) Preliminarily it urged that the statutory criteria which should be emphasized by the Arbitrator in the selection of the final offer should consist of the interests and welfare of the public, comparisons, and various other considerations normally taken into consideration in contract renewal proceedings. It questioned the applicability and/or the persuasive value of arguments and evidence related to certain other of the statutory criteria.
- (2) It urged, for various reasons, that the economic-geographic based comparables introduced and emphasized by the Association were the most appropriate and persuasive factor.
  - (a) That the school districts utilized are within the same area as the Dodge County districts, the current athletic conference (Flyway), and the former athletic conference (Wisconsin Little Ten).
  - (b) In a 1984-1985 school year arbitration, that Arbitrator Gordon Haferbecker indicated that the Flyway Athletic Conference schools formed one set of comparables, that school districts in Dodge County would be an appropriate second set of comparables, and that perhaps the parties could agree upon a third group of comparables from among those submitted at the hearing.

- (c) That eleven of the school districts in the economic-geographic area have settled for the 1986-1987 school year: Elkhart Lake, Hartford Elementary, Hartland Elementary, Hartland UHS, Lake Mills, New Holstein, Northern Ozaukee, Pewaukee, Random Lake, Watertown and Waupun.
- (3) That an examination of the evidence in the record indicates that the Association's final salary offer is the more reasonable of the two offers on the basis of the comparison criterion.
- (a) That the District has not submitted evidence of any school district settlements for the 1986-1987 school year, apparently intending to argue that the absence of settlements among its comparables, necessitates greater weight being given to other statutory criteria.
- (b) In teacher salary disputes, that the primary consideration is normally the going salaries of other teachers and their current salary increases. That the Association has submitted persuasive evidence supporting its final offer, in the form of historic and current comparisons of Horicon's salary position among the settled school districts comprising the economic-geographic area. That comparisons based upon benchmark increases, dollars and percentage increase per teacher, and historic relative salary positions persuasively support the Association's position in these proceedings.
- (i) That the Association's final offer would increase each salary schedule benchmark by 6.6%, while the District's offer would afford increases of 3.7%.
- (ii) That the average of settled districts at the BA minimum is 6.6%, at the BA 7 is 6.3%, at the BA maximum is 5.9%, at the MA minimum is 7.0%, at the MA 10 is 7.0%, at the MA maximum is 6.8% and at the schedule maximum is 6.8%. That these figures support the selection of the Association's offer of a 6.6% increase rather than the District's offer of a 3.7% increase.
- (iii) That an analysis of the dollar increases at each of the benchmarks shows the District offer to be from \$474 to \$952 lower than the comparables, while the Association offer closely corresponds to the increases in the other districts.
- (iv) That looking only to the similar size schools within the economic-geographic area, the average increases are 7.0% at the BA minimum, 6.5% at the

BA 7, 5.7% at the BA maximum, 7.5% at the MA minimum, 7.5% at the MA 10, 6.7% at the MA maximum and 7.2% at the schedule maximum. That these figures clearly support the 6.6% final offer of the Association, rather than the 3.7% final offer of the District.

- (v) That the average salary increases among the comparables was \$2076 per teachers or an average increase of 8.21%. That the Association offer would entail an average increase of \$2082 or 8.14% while the District offer entails an average increase of \$1323 and 5.17%.
- (vi) In looking only to similar size district comparisons, the increases averaged \$2042 per teacher or 8.09%, which figures also support the adoption of the Association's final offer.
- (c) That the average total package increases for all comparable districts and for similar size comparables were 8.0% and 7.9%, well in excess of the District's offer of a 5.0% final package increase, and slightly more than the 7.66% increase requested by the Association.
- (d) That adoption of the Association's final offer would maintain Horicon's ranking among comparable districts, while selection of the District's final offer would diminish Horicon's ranking in five of the seven salary benchmarks. That the same considerations are present when the comparisons are made on the basis of salary or percentage deviations from average at the various benchmarks.
- (e) That the District's final offer would reduce the ranking of Horicon in three of seven salary benchmarks among comparable size districts within the larger comparison group. That the same considerations are present when the comparisons are made on the basis of salary or percentage deviations from average at the various salary benchmarks.
- (4) That the pattern of settlements in the school districts in the economic-geographic area is the appropriate indicator of the statutory cost of living criteria.
  - (a) That various Wisconsin interest arbitrators have found that the pattern of settlements, which reflect cost of living consideration by the settling parties, is a more persuasive consideration than mere movement in the appropriate CPIs.
  - (b) That the parties previously provided for salary movement indexed to the CPI, but they deleted the provision in their 1982-1984 agreement. That

Horicon teachers' salary levels have eroded rapidly since the parties departed from automatic COLA, and that it would be unfair and inappropriate to now use the consumer price index to justify further diminishing the salary levels in relationship to the settled districts in the economic-geographic area.

- (c) In any event, that inclusion of the vertical increment in the measurement of salary against CPI movement would deny teachers the opportunity to increase their purchasing power.
- (5) That the interests and welfare of the public considerations are best served by the selection of the Association's final offer.
- (a) Despite the contents of certain of the District's exhibits, the parties stipulated at the hearing that ability to pay was not in issue in these proceedings.
  - (b) That if the District wishes to argue that its citizens are economically depressed, it has the obligation to demonstrate this with evidence showing them to be in a more adverse position than those in other districts in the same economic-geographic area. Only if the District presents credible evidence that Horicon is in a significantly worse economic condition than other settled districts, would it be appropriate to consider an economic award in Horicon which is less than found in these other districts.
  - (c) That in Horicon and in the general geographic area, the overall economy has been affected to some degree by the farm problems, but the Horicon economy is arguably in good shape. That various exhibits introduced into the record by the Association show a relatively high level of average income in the District, a good 1986 economy, some industrial progress, and good prospects for increased hiring within the District.
  - (d) That Horicon has provided a quality educational product, and that the local taxpayer does not appear to carry an extraordinary tax burden in funding this product.
    - (i) That Horicon ranks last among the comparables in cost per member of the District, tenth of twelve in the local share of this cost, and twelfth of twelve in the levy rate. Further, that income per tax filer, property status of families, and the amount of money for educational credits indicate an economic climate suitable to support the Association's final offer.

- (ii) That property taxes have actually declined as a percentage of farm income in the last decade, and constitute a relatively small percentage of the farmer's total expenses. Due to the state aids distribution formula, that the decline in farm equalized valuation and the new farmland assessment procedures will offset some of the property tax pressure on farmers.
- (iii) That the farm economy impact upon Horicon is not nearly as great as the case elsewhere, and that Dodge County is simply not a "farm dependent" county; that the problems of some local farmers have been aided by utilization of the Farmland Preservation Act. Further, that farmers receive a variety of governmental subsidies and there has been no showing that adoption of the salary increase sought by the Association would have any substantial impact upon farmers.
- (iv) That unemployment in Dodge County has shown recent improvement.
- (v) That evidence in the record summarizes the need to retain and to attract competent individuals to teaching, and that higher salaries will be needed for this purpose. That evidence in the record also shows that other private sector occupations and professions have outstripped Horicon teachers in terms of earnings.
- (vi) That excerpts from various studies and reports which were introduced into the record, support the need for upward movement in teacher salaries. That salary increases are particularly needed to attract new graduates into the profession.

On the basis of the entire record, the Association submits that its final offer is well within the existing settlement pattern, that the District offer would diminish Horicon's benchmark rankings and relative salary positions versus those districts which have settled for 1986-1987, that how comparable districts have addressed cost of living considerations is more persuasive than the CPI itself, that the parties have discontinued using the CPI as the determining factor in teacher salary increases, that no ability to pay issue exists; that the local economy is in relatively good shape, and that the Association's final offer better meets the need to attract and retain competent teachers in the District.

In support of the position that its final offer is the more appropriate of the two before the Arbitrator, the District emphasized a variety of arguments.

- (1) That the principal arbitral criteria applicable in the case at hand should be the interests and the welfare of the public, comparisons with the wages of certain other employees in public and private employment, an examination of cost of living considerations and consideration of the overall level of compensation criterion. It submitted that since there were no settlements within the Employer's proposed comparison pool, that the typical comparison consideration could not be controlling.
- (2) In connection with the interests and welfare of the public considerations, that the following factors should be persuasive.
  - (a) That the Board must be continually cognizant of this criterion, because the public bears the major tax burden of any economic decision affecting the District. That the Association's final offer exceeds that of the Board by 2.66% or a total of \$53,000.
  - (b) That the Association's offer is inconsistent with certain of the District's overall financial circumstances, including recent declines in equalized valuation, a recent increase in the tax levy for those taxpayers within the City of Horicon, and substantial recent increases in the tax rate.
  - (c) That by making a demand which is eight times that justified by the CPI, the Association's position is simply beyond reasonableness.
- (3) That the Board proposed comparison pool is the most appropriate for the resolution of the dispute at hand.
  - (a) That the most appropriate comparisons consist of the Flyway Athletic Conference and two contiguous districts, Hustisford and Dodge Land, rather than the far-sweeping group based upon so-called economic-geographic area considerations, as proposed by the Association.
  - (b) That the comparison group proposed by the District is consistent with a prior arbitration decision between the parties in 1985, and with many arbitration decisions elsewhere which have utilized athletic conference schools as the primary comparison group. That the Flyway Conference was most recently used by another arbitrator in a May 13, 1987 decision and award governing the Mayville School District.
  - (c) Not only is athletic conference membership an important criterion per se, but other factors such as FTE, Enrollment, ADM, Full Value Tax Rate, State Aid Per Pupil, Total Aid Per Pupil and School Cost

Per Pupil must be analyzed to support acceptance of the appropriate comparable pool. That consideration of these factors within the comparison pool urged by the Employer clearly reflects the appropriateness of the pool.

- (4) That the Union's proposed comparison pool, based upon a purported economic-geographic area, is inappropriate for a variety of reasons.
  - (a) It deviates from that which has been utilized in the past.
  - (b) It incorporates some districts which a previous arbitrator has determined were not appropriate comparables.
  - (c) It ignores the important concept of geographic proximity.
  - (d) Various of the Union proposed districts are influenced by the Milwaukee area socio-economic market.
  - (e) The Association is really comparability shopping or cherry picking in an attempt to bootstrap support for its proposed salary offer. That such an approach has been rejected by other arbitrators.
- (5) That the lack of settlements in comparable districts in the case at hand simply requires greater analysis and emphasis upon certain other statutory criteria, which should govern the dispute.
- (6) That consideration of various factors in relationship to the comparison criterion, support the selection of the final offer of the District.
  - (a) That the Horicon teachers have enjoyed a leadership position within the primary comparison pool, and that Mayville teachers have typically ranked second. That benchmark comparisons within the comparability group during the 1984-1985 and the 1985-1986 school years indicate this fact, and that an examination of the Horicon and the Mayville final offers for 1986-1987 indicates that the leadership would be maintained with the selection of the Board's final offer.
  - (b) That the selection of the Association proposal would widen the historic gap between Horicon and Mayville. That there is no basis in the record for widening the traditional difference between the two districts.

- (c) That Horicon teachers are encouraged to partake in lane movement to improve their salaries, in that the Horicon salary structure is the most generous of any structure in the area; unlike other districts, that Horicon allows full lane movement on the basis of credits, without the need for a masters degree.

That from the summer of 1986 into 1987, nineteen of the fifty-eight teachers in the District gained credits toward lane movement. Further, that teachers in Horicon are allowed to partake in lane movement twice per year.

- (d) That the overall level of compensation of the Horicon teachers is superlative. That fringes include 100% paid health insurance, 100% paid dental insurance, 100% payment of long term disability benefits at 90% of salary after 90 days, 20% paid life insurance and full payment of retirement benefits; that these fringes can be contrasted with lower levels of benefits or scope of insurance coverage provided in other districts.
- (e) That the final offer of the Board is more reasonable when compared to increases in the consumer price index. Due to recent updates made in the market basket used to measure movement in the CPI, that it alone may be better used to measure the reasonableness of the respective final offers.
- (f) That the Board's final offer allows the Horicon teachers to receive increases that exceed those of other School District employees and municipal employees of Horicon.
- (i) That members of the food service, custodial and clerical staff within the Horicon District received 5% increases for 1986-1987, while the District has proposed to increase average teacher's pay by 5.17%; that acceptance of the Association's final offer would generate an additional increase of 3% beyond the Board's final offer, which increase is not justified by the comparison.
- (ii) That all of the bargaining units within the City of Horicon received 3% wage increases for 1986-1987, while Dodge County increases generally ranged between a minimum of 2% and a maximum of 4%. Despite the various inherent difficulties in comparing teachers with other groups of municipal or county employees, that the magnitude of increases granted other public and private sector employees is a valid arbitral consideration in interest disputes.

- (g) That the District's final offer provides compensation significantly exceeding that received by other area professionals in the south central Wisconsin labor market, including such groups as accountants, mechanical engineers, registered nurses and social workers. Further, that the Horicon teacher increases proposed by the District also exceed the increases granted to private sector industry employees located within the Horicon School District.
- (7.) That the remarkable continuity and stability of employment within the Horicon School District do not support the selection of the Association's final offer.

In summary, that the Board's final offer was formulated in an attempt to equitably balance the needs of the teaching staff and the tax paying public. Given the recent instability in the overall Wisconsin school aid situation, the likelihood that the equalized value in the District will not increase measurably, and the enormous recent increases in the tax levy borne by taxpayers, that the District's offer reflects the ability of residents to assume the burden of another potential large tax increase. Conversely, that the Union's proposal does not take into account such factors as the needs of the public, the impact of near negative inflation, the increases being granted other public sector employees and the increases for private sector employees. That the Horicon teachers have been treated quite favorably in the past, and that the selection of the Board's final offer would maintain their salary leadership position.

In its reply brief that the Association emphasized the following principal points.

- (1) Contrary to the argument of the Employer, that the parties implemented the salary schedule BA equivalencies during the 1985-1986 school year, that the automatic cost of living escalation was eliminated during the 1982-1983 school year, and that the tax levy increase in the District was 8.6% during 1986-1987.
- (2) That the District acted improperly in citing additional evidence in its post hearing brief. That its reference to the Mayville School District arbitration should be disregarded by the Arbitrator.
- (3) That the Association was not guilty of comparison shopping or cherry picking, as alleged by the District.
- (a) That Arbitrator Haferbecker in his earlier decision referred to a third set of comparables, and that the Association merely analyzed the settlement pattern of all settled school districts in the arbitrator's third comparison group, as well as looking to the

similar in size to Horicon.

- (b) That the Association did not exclude any settled districts from its analysis of the settlement pattern in the economic geographic area.
  - (c) That the District's reference to the prior arbitrator's decision stops immediately prior to his reference to the third set of comparables. That the District's effort to avoid comparisons is understandable, because it was unable to cite a single settlement in the area surrounding Horicon which supports the adoption of the District's final offer.
  - (d) That there is ample justification for going beyond the boundaries of Dodge County and the Flyway Athletic Conference in undertaking comparisons.
- (4) That the District has established itself as a wage leader among school districts in the athletic conference and within Dodge County; while it would be nice to have an agreed upon set of comparables, no damage to bargaining stability is presented by utilization of the Association's comparables, the adoption of which would merely maintain Horicon's historic salary position among the cited districts.
- (a) That an arbitrator's decision does not mean that subsequent arbitrators are locked in to the original comparison group.
  - (b) That the District's attempt to lock the parties into the possible use of only two of three sets of comparables found appropriate by a prior arbitrator is simply inappropriate.
  - (c) In its selection of comparables, that the Association has used all of the settled school districts in the economic-geographic area, and used a subset of similar size districts. That the comparisons provide a sound basis for the adoption of the Association's final offer.
- (5) That the District's reliance upon so called other factors in support of its position is a reflection of the fact that there is not a single settlement which supports the adoption of its final offer.
- (a) That consideration of the CPI, community ability to fund education, and other public and private sector settlements are less persuasive than the comparisons advanced by the Association.
  - (b) That the weight of arbitral authority is to place greater weight upon teacher comparables than upon

the other factors cited by the District.

- (c) That there is a clear consensus that teaching is one of the most underpaid professions in public service today.
- (d) That the District's emphasis upon the level of certain benefits enjoyed by those in the unit must be considered in light of the fact that it offered no comparisons to similar benefits enjoyed by other districts. That the District's arguments relative to the percentage of teachers moving within the salary schedule is also deficient due to lack of comparison data.
- (e) In connection with fringe benefits consideration, that the Association's final offer total cost of 7.66% is right in line with the comparable average of 8% for settled districts in the economic-geographic area, and well within the range of such increases.

In its reply brief, the District emphasized the following major points.

- (1) That the comparables urged by the Association ignore the prior interest arbitration between the parties which established the primary comparability pool as the Flyway Athletic Conference and certain other Dodge County districts.
- (2) That there is considerable arbitral authority for the use of athletic conference comparisons, and also for the use of stable and consistent comparisons.
- (3) That the Employer's citing an arbitration decision rendered after the hearing in this matter but before the submission of post-hearing briefs, was proper and is specifically provided for by the Wisconsin Statutes.
- (4) That utilization of the athletic conference for primary comparisons is justified by the fact of the member schools' previously cited similarities.
- (5) That the Association's comparables show a mysterious mathematic precision in various figures cited by it, including the benchmark averages, the average percentage increases, the average salary increases and the average income per tax filer. That the almost identical figures for the districts does not mean that the comparisons are appropriate for arbitral use.

Further, that arbitrators generally give little consideration to comparisons that disregard geographic proximity.

- (6) That in its brief, the Association presents a falsely rosy picture of the private sector economy in the Horicon School District. That it ignores evidence of the scope of private sector layoffs, and that it cites certain documentary evidence which it was unable to authenticate at the hearing.
- (7) That the Association's request for an average 8.14% increase in salary ignores economic realities reflected in near negative inflation.
  - (a) That there is no basis for the Association citing certain private sector comparisons and then disregarding the fact of private sector increases of less than one-half that demanded by the Association.
  - (b) That the Association's argument that the consumer price index should be ignored is illogical and inconsistent with the specific language of the Wisconsin Statutes.
  - (c) That there is no evidentiary basis for the Association's argument that teachers have lost ground since the negotiated removal of the cost of living escalator provision.
- (8) That in citing various studies on education and teaching, the Association has been extremely selective.
  - (a) That salary considerations cannot be isolated to the exclusion of other educational needs, and that other Wisconsin arbitrators have agreed with this approach.
  - (b) As recognized by other Wisconsin arbitrators, that overall educational needs should be addressed by the executive and legislative branches of government, rather than in the interest arbitration process.
- (9) That the District's offer averaging \$1323 per returning teacher is closer to where the parties should have reached agreement than the Association's demand for increases averaging \$2082. Contrary to some of the national evidence cited by the Association, there is no apparent shortage of teachers within the District.

FINDINGS AND CONCLUSIONS

The record in this proceeding is complex and marked by a wealth of material when measured by volume, but only a few of the arbitral criteria were emphasized by the parties. For the purpose of clarity, the Impartial Arbitrator will separately discuss each of these criteria prior to selecting the more appropriate final offer, and rendering an award.

The Comparison Criterion

The legislature has not prioritized the various arbitral criteria specified in Section 111.70(4)(cm)7 of the Wisconsin Statutes, but it is a well established principle that the comparison criterion is generally the most persuasive factor to neutrals. This is not to indicate, however, that this is always the case and/or that other of the various criteria might not be the most important factor under other circumstances. Cost of living considerations, for example, gain relatively increased importance during time periods when there are significant changes in the consumer price indices, while ability to pay would be the conclusive factor in any situation where a public employer was bereft of the ability to fund any increases in wages and benefits.

Merely articulating the principle that comparisons are normally the most important single factor in arriving at decisions in interest arbitration proceedings does not, however, answer several rather difficult questions. First of all, what comparisons should be used in arriving at an evaluation of the relative merits of parties' final offers? Second, what should be done when the normally appropriate comparables have not yet reached settlements against which the final offers can be compared?

In the situation at hand, the parties differed in the proposed answers to each of these questions. The Employer suggested that the proper comparisons would be within the athletic conference, except for Beaver Dam, and with the addition of two contiguous school districts. Since there are no settlements within this group, argued the Employer, other of the statutory criteria such as other public and private sector comparisons, cost of living considerations, and the interest and welfare of the public should be the determining factors in arriving at a decision and in rendering an award. The Union, on the other hand, urged that a somewhat broader comparison group based upon economic and geographic considerations should be employed, in addition to a subset based upon district size, and that the comparison criterion when applied within this broader group, should continue to play its characteristically dominant and persuasive role in the final offer selection process.

Despite the normal persuasive value of comparisons, the Employer has urged that primary comparisons be virtually disregarded and that other criteria be used in the selection of a final offer, and such an approach has been used by interest arbitrators in two basic types of situations, which are described

as follows in the venerable book by Bernstein: 1./

"There is one type of wage decision for which comparisons provide no guidance: the first one. Obviously, there must be a basis for comparison and the wage leader (Dunlop refers to this situation as the 'key bargain') has none. The pace-setter must, therefore, make the determination on other grounds....."

\* \* \* \* \*

"The force of the intraindustry comparison is inapplicable, because irrelevant, to two situations: industry-wide bargaining and the wage leader. When all the firms in an industry bargain jointly, there is, obviously no one to follow. The national bargaining structure on the railroads has had this effect in wage determination.

The reason for the inapplicability of the intraindustry comparison to the wage leader has already been suggested.....Dunlop has generalized the origin of the problem in these terms:

'A study of wage movements in almost any industry reveals that there are a limited number of 'key bargains' which tend to condition the change in wage levels in the industry. These bargains may be described as 'growth points' in the wage structure. When wage rates have been fixed on these properties, the rest of the industry tends to adapt itself...All parties in the industry tend to watch these bargains as indicators of the direction and amounts of wage change 'in the air.'

The decision criterion in the case of the wage leader must be something other than the intraindustry comparison. David Cole has suggested that this vacuum be filled with the interindustry comparison."

If the undersigned were dealing with the first teacher settlement in the State of Wisconsin, or even the first school district settlement within reasonable geographic proximity to the Horicon School District I would be inclined to disregard any evidence of remote settlements which had little or no relationship to the Horicon District and/or which had not been used by the parties in the past for comparison purposes in their negotiations or in the mediation, fact-finding or interest arbitration process. In the situation at hand, however, the comparables selected by the Association are not remote geographically; to the contrary, an examination of Association Exhibit #25 show that three of the districts (Hartford Elementary, Waterfown and Waupun) are either wholly or substantially located in Dodge County, and the bulk of the remaining districts are located in immediately adjacent counties.

The Employer complains that the Association has selected

districts for comparison purposes on the basis of its desire to prevail in these proceedings, is undoubtedly correct at least in part. Indeed, both parties normally attempt to select those comparables which would best support their respective positions. Even if arbitral attention is directed exclusively to the three settlements in Dodge County, however, the Association's position is still clearly supported! Association Exhibits #46 and #47 clearly show that the average dollar increases, the percentage increases, and the package increases for Hartland Elementary, Watertown and Waupun, are slightly above the final offer of the Association and considerably above the final offer of the District. If only districts of similar size are utilized, Association Exhibits #44 and #45 show that the average dollar increases, the percentage increases and the total package increase figures are extremely close to the final offer of the Association in these respects. Although the District referred to the comparison figures as being mysteriously close, there is nothing in the record to suggest that they are anything but accurate!

What then of the other public and private sector comparisons cited by the parties? The Employer cited the settlements and increases accorded other District employees, City of Horicon employees, and certain private sector employees. The Association cited certain private sector professional salaries which showed that the teachers have not received comparable treatment to that accorded employees within other occupations and professions. While the statutory criteria clearly include other private sector and public sector employees, the inherent difficulty in persuasively comparing teachers with other groups of employees is obvious and has been well documented in various other arbitration proceedings cited by the parties. The data and the arguments of the parties relating to private sector and other public sector comparisons is simply not as persuasive as the educational comparisons, and was not introduced in sufficient detail to allow for comprehensive comparison. The Arbitrator has preliminarily concluded that it simply cannot be given the weight urged by the Employer or the Association.

On the basis of the above, the Impartial Arbitrator has preliminarily concluded that the secondary comparisons emphasized by the Association clearly and persuasively support the selection of its final offer in these proceedings. Despite the lack of the athletic conference comparisons which have been used by the parties in the past, the Association's evidence shows settlements in reasonably close proximity to the Horicon District, and also shows comparisons based upon size comparability. The complete absence of any comparisons which would support the selection of the District's final offer also enhances the evidentiary value of the comparisons urged by the Association.

The Cost of Living Criterion

As indicated above, cost of living considerations will vary in importance depending upon the economic environment in which they are applied, but under normal circumstances they are of less importance than the comparison criterion. One reason for this factor was referenced in some of the arbitral decisions cited in the briefs of the parties, and consists of the fact that the settlements of others already include some consideration of cost of living. The statutory cost of living criterion mandates consideration of movement in the CPI, however, and there is no basis for disregarding index movement in addressing this criterion.

Arbitrators will normally only consider salary structure or cell increases against CPI movement in teacher disputes, because the parties have provided for teachers gaining increases in individual salary through additional experience and/or through gaining additional educational credentials. As urged by the Association, to consider the average increase by teachers in addressing COL considerations would at least theoretically deprive them of the opportunity to increase their earnings from year to year on the basis of the agreed upon experience and educational increments in the salary structure.

The above discussion is entirely academic in this case, however, because even if the cell increases are utilized for comparison purposes, the selection of either of the final offers would be significantly in excess of percentage movement in the CPI during the year in question, and in excess of anticipated additional movement in the near term. Accordingly, it must be concluded that consideration of the cost of living criterion favors the selection of the Employer's rather than the Union's final offer.

If the only major criterion before the Arbitrator was cost of living, I would select the final offer of the Employer. As referenced above, however, comparisons are normally the most important single factor in the final offer selection process, and this is particularly true in the case at hand, due to the persuasive nature of some of the secondary comparables selected by the Union, and the absence of any comparables relied upon by the District.

The Interests and Welfare of the Public Criterion

Each of the parties emphasized certain arguments in connection with the interests and the welfare of the public criterion.

- (1) The Employer particularly emphasized the substantial tax burden upon the citizenry in funding any additional increases in school district costs, and it also cited recent declines in equalized valuation, a recent increase in tax rates, and a recent increase in the tax levy in the City of Horicon. It also referenced the recent questionable state of the economy, and urged that the District's offer reflected the ability of the residents to assume the burden of another potentially large tax increase.
- (2) The Association emphasized that there was no ability to pay question raised in the proceedings, urged that there is no evidence that the District was in a more difficult economic position than comparable districts, that Horicon was not farm dominated, and suggested that the local economy was doing reasonably well in 1986. It urged that the District had provided a high quality educational product in the past, and that there was no evidence that this effort was creating an extraordinary or disproportionate tax burden. The Association also alleged the need for educational excellence, which necessitated various things including improved teacher salaries.

While the District is quite correct in its argument that local economic considerations must be given substantial weight by interest neutrals, such considerations are given conclusive effect only where the record indicates an absolute inability to pay. When, as in the situation at hand, arbitrators are dealing with reluctance to pay rather than inability to pay, they are particularly interested in the comparable commitments of other districts. An arbitrator may be reluctant to adopt a comparable final offer if it also entails a disproportionate or unreasonable economic effort on the part of a community, rather than merely adopting the comparable offer without regard to economic circumstances. In the situation at hand, however, the record indicates no significant differences between the economic considerations facing the Horicon District versus those other districts urged for comparison purposes by the Union. The District has made a substantial commitment in the past, and there is no basis for the Arbitrator to conclude that a similar commitment should not be made in the case at hand; there is simply no indication that the District is relatively less able to fund increases than other Districts.

In connection with the Union's arguments for overall and general improvement in the educational process, and concomitant improvement in the salaries paid to teachers, I will merely comment and observe that such overall considerations must be kept in mind by interest neutrals, but they should more logically be addressed by the executive and the legislative branches of government, and they should also be **addressed** across the bargaining table by the parties.

On the basis of the above, the Impartial Arbitrator is unable to assign determinative weight to the interest and the welfare of the public criterion.

The Overall Level of Compensation Criterion

Each of the parties addressed the overall level of compensation criterion in their final briefs.

- (1) The District cited the apparently excellent benefits structure for teachers, including 100% paid health insurance, 100% paid dental insurance, 100% payment for long term disability benefits at 90% of salary, 20% paid life insurance, and full employer payment of retirement costs. It argued that the overall level of benefits enjoyed by those in the bargaining unit was better than those offered to unspecified other teachers.
- (2) The Association pointed out that the negotiated benefits levels cited by the District had not been compared with other districts in the evidence introduced at the hearing, also submitting that the Association's final offer total cost of 7.66% was right in line with the average total cost increase of 8.0% in comparable districts.

The overall level of compensation criterion was put into the statute for the apparent purpose of allowing balanced arbitral consideration of situations where consideration of employees' overall levels of benefits could forestall inferences that might otherwise be drawn from looking at particular impasse items on an isolated or singular basis. Apparent deficiencies in salaries or in certain benefits may well be offset by the parties' adoption of a package that is fully competitive on an overall basis.

While the record substantiates the existence of an excellent overall level of benefits, the Union is quite correct that there is nothing in the record to indicate that the Employer's overall benefits levels or costs are out of line with those present in other districts.

On the basis of the above, the Impartial Arbitrator has preliminarily concluded that while those in the bargaining unit apparently have an excellent overall level of benefits,

this factor cannot be assigned determinative weight in these proceedings.

Summary of Preliminary Conclusions

As addressed in greater detail above, the Impartial Arbitrator has reached the following summarized principal preliminary conclusions.

- (1) The comparison criterion is normally regarded as the most important and the most persuasive of the various statutory criteria. There is no basis for disregarding consideration of valid educational comparisons in the situation at hand.
- (2) The various comparisons urged by the Association clearly and persuasively support the selection of the final offer of the Association rather than that of the District. Despite the lack of athletic conference comparisons which have been used by the parties in the past, the Association's evidence shows settlements in reasonably close proximity to the Horicon District, and also shows comparisons based upon size. The absence of any school district comparisons by the District also supports and enhances the persuasive value of the comparisons urged by the Association.
- (3) Cost of living considerations favor the adoption of the final offer of the Employer, but this criterion cannot be assigned determinative weight in these proceedings.
- (4) The evidence and the arguments of the parties relative to the interests and welfare of the public criterion cannot be assigned determinative weight in these proceedings.
- (5) The evidence and the arguments of the parties relative to the overall level of compensation criterion cannot be assigned determinative weight in these proceedings.

Selection of Final Offer

After a careful consideration of the entire record, including a consideration of all of the statutory criteria, the Impartial Arbitrator has preliminarily concluded that the final offer of the Association is the more appropriate of the two final offers. This conclusion is particularly indicated by consideration of the parties' final offers in comparison against the salary settlements in other school district emphasized by the Association.

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1./ The Arbitration of Wages, University of California Press, 1954, pages 55, 59-60. (footnotes omitted)

AWARD

Based upon a careful consideration of all of the evidence and argument, and pursuant to the various arbitral criteria provided in Section 111.70(4)(cm)(7) of the Wisconsin Statutes, it is the decision of the Impartial Arbitrator that:

- (1) The final offer of the Association is the more appropriate of the two final offers;
- (2) Accordingly, the Association's final offer, herein incorporated by reference into this award, is ordered implemented by the parties.

/s/ William W. Petrie  
WILLIAM W. PETRIE  
Impartial Arbitrator

August 31, 1987